

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MICHELLE R. CARLSON,

Plaintiff,

v.

MICHAEL ASTRUE, Commissioner of
Social Security,¹

Defendant.

No.: CV-12-42-EFS

**ORDER GRANTING DEFENDANT'S
SUMMARY-JUDGMENT MOTION AND
DENYING PLAINTIFF'S SUMMARY-
JUDGMENT MOTION**

Before the Court, without oral argument, are cross-summary-judgment motions. Plaintiff Michelle R. Carlson appeals the Administrative Law Judge's (ALJ) denial of benefits after October 23, 2009. ECF No. 5. Ms. Carlson contends the ALJ erred in determining that her psychological and physical impairments do not constitute a disability after October 23, 2009. The Commissioner of Social Security ("Commissioner") asks the Court to affirm the ALJ's decision that Ms. Carlson is capable of returning to her past relevant work as a medical biller. After reviewing the record and relevant authority, the Court is

¹ Carolyn W. Colvin became the Acting Commissioner of Social Security on February 14, 2013. Pursuant to Federal Rule of Civil Procedure 25(d), Ms. Colvin is substituted for Michael J. Astrue as the Defendant in this lawsuit. No further action need be taken to continue this lawsuit. 42 U.S.C. § 405(g).

1 fully informed. For the reasons set forth below, the Court affirms the
2 ALJ's decision and therefore denies Ms. Carlson's motion and grants the
3 Commissioner's motion.

4 **A. Statement of Facts²**

5 Ms. Carlson is a 36-year-old woman who lives with her mother and
6 father. ECF No. 11, at 69. At the time of the hearing, Ms. Carlson had
7 a ten-year-old daughter whom she cared for part-time. *Id.* at 70 & 649.
8 In 1996, Ms. Carlson graduated from Apollo College with a medical
9 billing certificate. *Id.* at 70. Ms. Carlson has worked as a medical
10 biller, a certified nursing assistant, a secretary, a seasonal employee
11 at Toys "R" Us, and an office manager. *Id.* at 70-71.

13 On January 2, 2007, Ms. Carlson was in a serious roll-over car
14 accident. *Id.* at 71-72. As a result of the accident, she experienced
15 back pain, left leg pain, and left shoulder pain, which made it
16 difficult for her to sit, walk, and bend over. *Id.* at 72. Ms. Carlson
17 was medically excused from work as the office manager at the
18 psychologist's office for a year, and she thereafter did not return to
19 work. *Id.* at 73.

21 In June 2009, Ms. Carlson underwent low back fusion surgery. *Id.*
22 at 75. Five months after that surgery, Ms. Carlson was involved in
23 another car accident; her vehicle was rear-ended by a truck while she
24 was stopped at a stoplight. *Id.* at 76. As a result, Ms. Carlson began
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26 ² The facts are only briefly summarized. Detailed facts are
27 contained in the administrative hearing transcript, the ALJ's decision,
28 and the parties' briefs.

1 to suffer back pain, right shoulder pain, and daily headaches. *Id.* at
2 76-79.

3 Ms. Carlson sprained both ankles in March 2010. *Id.* at 81. She
4 had surgery on her right ankle in May 2010, and then on her left ankle
5 in 2011. *Id.* at 625 & 686. On September 14, 2010, Ms. Carlson had
6 right shoulder surgery to repair a tear in her shoulder. *Id.* at 80.
7 Ms. Carlson was assaulted several days before the administrative hearing
8 and was concerned that she reinjured her shoulder as she experienced
9 pain. *Id.* at 88-89. She received follow-up treatment for her shoulder
10 pain. *Id.* at 632-686.

12 Ms. Carlson vacuums, does light kitchen work, and uses a "grabber"
13 to lift items from the bedroom floor. *Id.* at 89. She does her laundry
14 about every three weeks. *Id.* at 90-91. Ms. Carlson's ability to sleep
15 is limited due to her back, neck, or shoulder pain. *Id.* at 91. Ms.
16 Carlson takes medicine for depression and anxiety. *Id.* at 92. Ms.
17 Carlson drives a car without any problems. *Id.* at 93.

18 **B. Procedural History**

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20 In February 2009, Ms. Carlson filed applications for Social
21 Security Disability Insurance Benefits and Supplemental Security Income
22 Benefits (hereinafter, "claim for benefits"), alleging an onset of
23 disability beginning January 2, 2007, due to lumbar disc disease,
24 irritable bowel syndrome, shoulder tendonitis, hypothyroidism, high
25 blood pressure, somatoform disorder, and dysthymic disorder. ECF No. 11
26 at 100, 163-174. Her claims for benefits were denied, *id.* at 100-103,
27 and her request for reconsideration of that denial was denied, *id.* at
28

1 104-115. Ms. Carlson then requested an administrative hearing, which
2 was held on November 10, 2010, before ALJ R. J. Payne. *Id.* at 43-95.
3 On November 24, 2010, the ALJ issued a partially favorable decision on
4 Ms. Carlson's claim for benefits, ruling that she was disabled from the
5 alleged onset date of January 2, 2007, through October 23, 2009. *Id.* at
6 20-32. The Appeals Council thereafter denied Ms. Carlson's request for
7 review. *Id.* at 1-6.
8

9 On January 11, 2012, Ms. Carlson filed this lawsuit, claiming the
10 ALJ's decision that her disability ended as of October 23, 2009, is not
11 supported by substantial evidence. ECF No. 5. On July 26, 2012, Ms.
12 Carlson filed her Motion for Summary Judgment, ECF No. 14, and on
13 September 10, 2012, the Commissioner filed its Motion for Summary
14 Judgment, ECF No. 17.

15 **C. Disability Determination**

16 A "disability" is defined as the "inability to engage in any
17 substantial gainful activity by reason of any medically determinable
18 physical or mental impairment which can be expected to result in death
19 or which has lasted or can be expected to last for a continuous period
20 of not less than twelve months." 42 U.S.C. §§ 423(d)(1)(A),
21 1382c(a)(3)(A). The decision-maker uses a five-step sequential
22 evaluation process to determine whether a claimant is disabled. 20
23 C.F.R. §§ 404.1520, 416.920.
24

25 Step one assesses whether the claimant is engaged in substantial
26 gainful activities. If she is, benefits are denied. 20 C.F.R. §§
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1 404.1520(b), 416.920(b). If she is not, the decision-maker proceeds to
2 step two.

3 Step two assesses whether the claimant has a medically severe
4 impairment or combination of impairments. 20 C.F.R. §§ 404.1520(c),
5 416.920(c). If the claimant does not, the disability claim is denied.
6 If the claimant does, the evaluation proceeds to the third step.

7
8 Step three compares the claimant's impairment with a number of
9 listed impairments acknowledged by the Commissioner to be so severe as
10 to preclude substantial gainful activity. 20 C.F.R. §§ 404.1520(d), 404
11 Subpt. P App. 1, 416.920(d). If the impairment meets or equals one of
12 the listed impairments, the claimant is conclusively presumed to be
13 disabled. If the impairment does not, the evaluation proceeds to the
14 fourth step.

15 Step four assesses whether the impairment prevents the claimant
16 from performing work she has performed in the past by examining the
17 claimant's residual functional capacity. 20 C.F.R. §§ 404.1520(e),
18 416.920(e). If the claimant is able to perform her previous work, she
19 is not disabled. If the claimant cannot perform this work, the
20 evaluation proceeds to the fifth step.

21
22 Step five, the final step, assesses whether the claimant can
23 perform other work in the national economy in view of her age,
24 education, and work experience. 20 C.F.R. §§ 404.1520(f), 416.920(f);
25 see *Bowen v. Yuckert*, 482 U.S. 137 (1987). If the claimant can, the
26 disability claim is denied. If the claimant cannot, the disability
27 claim is granted.
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1 The burden of proof shifts during this sequential disability
2 analysis. The claimant has the initial burden of establishing a *prima*
3 *facie* case of entitlement to disability benefits. *Rhinehart v. Finch*,
4 438 F.2d 920, 921 (9th Cir. 1971). The burden then shifts to the
5 Commissioner to show 1) the claimant can perform other substantial
6 gainful activity, and 2) that a "significant number of jobs exist in the
7 national economy," which the claimant can perform. *Kail v. Heckler*, 722
8 F.2d 1496, 1498 (9th Cir. 1984). A claimant is disabled only if her
9 impairments are of such severity that she is not only unable to do her
10 previous work but cannot, considering her age, education, and work
11 experiences, engage in any other substantial gainful work which exists
12 in the national economy. 42 U.S.C. §§ 423(d)(2)(A), 1382c(a)(3)(B).

14 **D. Standard of Review**

15 On review, the Court considers the record as a whole, not just the
16 evidence supporting the ALJ's decision. *See Weetman v. Sullivan*, 877
17 F.2d 20, 22 (9th Cir. 1989) (quoting *Kornock v. Harris*, 648 F.2d 525,
18 526 (9th Cir. 1980)). The Court upholds the ALJ's determination that
19 the claimant is not disabled if the ALJ applied the proper legal
20 standards and there is substantial evidence in the record as a whole to
21 support the decision. *Delgado v. Heckler*, 722 F.2d 570, 572 (9th Cir.
22 1983) (citing 42 U.S.C. § 405(g)); *Brawner v. Sec'y of Health & Human*
23 *Servs.*, 839 F.2d 432, 433 (9th Cir. 1987) (recognizing that a decision
24 supported by substantial evidence will be set aside if the proper legal
25 standards were not applied in weighing the evidence and making the
26 decision). Substantial evidence is more than a mere scintilla, *Sorenson*
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28

1 *v. Weinberger*, 514 F.2d 1112, 1119 n.10 (9th Cir. 1975), but less than a
2 preponderance, *McAllister v. Sullivan*, 888 F.2d 599, 601-02 (9th Cir.
3 1989); *Desrosiers v. Sec'y of Health & Human Servs.*, 846 F.2d 573, 576
4 (9th Cir. 1988). "It means such relevant evidence as a reasonable mind
5 might accept as adequate to support a conclusion." *Richardson v.*
6 *Perales*, 402 U.S. 389, 401 (1971) (citations omitted). "[S]uch
7 inferences and conclusions as the [ALJ] may reasonably draw from the
8 evidence" will also be upheld. *Mark v. Celebrezze*, 348 F.2d 289, 293
9 (9th Cir. 1965). If the evidence supports more than one rational
10 interpretation, the Court must uphold the ALJ's decision. *Allen v.*
11 *Heckler*, 749 F.2d 577, 579 (9th Cir. 1984).

13 **E. Analysis**

14 Ms. Carlson argues the record necessitates a finding that she is
15 more limited psychologically and physically than the ALJ determined
16 after October 23, 2009. To support her argument that she has a severe
17 mental impairment, Ms. Carlson points to 1) Dr. Scott Mabee's diagnosis
18 that Ms. Carlson suffers from an undifferentiated somatoform disorder, a
19 dysthymic disorder, a major depressive disorder, and a personality
20 disorder; 2) post-October 2009 Northwest Orthopedic Specialists' records
21 indicating Ms. Carlson has a history of depression and anxiety and is
22 prescribed Cymbalta and Wellbutrin; and 3) Dr. Mary Gentile's opinion
23 that Ms. Carlson suffers from an affective disorder, somatoform
24 disorder, and personality disorder.
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26 After reviewing the record, the Court finds the ALJ applied the
27 proper legal standards and that his decision is supported by substantial
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evidence in the records. The ALJ addressed Ms. Carlson's headaches, ankle pain, and right shoulder pain; the related medical documentation; and her lifestyle activities. The ALJ also appropriately explained his reason for rejecting Dr. Scott Mabee's November 24, 2009 opinion and appropriately relied on Dr. Ronald Klein's opinion that Ms. Carlson does not have a severe mental impairment. The ALJ's decision that Ms. Carlson's impairments do not constitute an impairment or combination of impairments of such severity that she is prevented from returning to work as a medical biller after October 23, 2009, is supported by the record. Although the Court may have reached a different end-of-disability date as the ALJ, there is substantial evidence in the record to support the ALJ's determination that Ms. Carlson no longer suffered a severe impairment or combination of impairments that made her unable to perform past relevant work as a medical biller after October 23, 2009.

E. Conclusion

In summary, the Court finds the record contains substantial evidence from which the ALJ properly concluded, when applying the correct legal standards, that Ms. Carlson was no longer disabled after October 23, 2009. For the above-given reasons, **IT IS HEREBY ORDERED:**

1. Ms. Carlson's Motion for Summary Judgment, **ECF No. 14**, is **DENIED**.
2. The Commissioner's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.
3. **JUDGMENT** is to be entered in the Commissioner's favor.

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1 4. The case shall be **CLOSED**.

2 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
3 Order and provide copies to counsel.

4 **DATED** this 30th day of July 2013.

5
6 s/ Edward F. Shea .
7 EDWARD F. SHEA
8 Senior United States District Judge